

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

**UNITED STATES OF AMERICA,**

**and**

**STATE OF MARYLAND,**

**Plaintiffs,**

**v.**

**BALTIMORE COUNTY,  
MARYLAND,**

**Defendant.**

**Civil Action No.**

**COMPLAINT**

The United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Maryland, acting by the authority of the Attorney General of Maryland and through its undersigned counsel, and acting at the request and on behalf of the Maryland Department of the Environment ("Department" or "MDE"), file this complaint and allege as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Clean Water Act" or "the Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and the assessment of civil penalties against Baltimore County, Maryland ("Baltimore County"), for the discharge of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Baltimore County has violated Section 301(a) of the Act by discharging pollutants without permit authority.

2. Plaintiff State of Maryland also brings supplemental state claims for violations of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

**JURISDICTION, VENUE, NOTICE, AND AUTHORITY**

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has jurisdiction over the claims of the State of Maryland asserted under the Environment Article pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

4. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391(b), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district where Baltimore County is located and where the alleged violations occurred.

5. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Maryland, which joins in this action as a co-plaintiff.

6. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516, 519, and Section 506 of the Clean Water Act, 33 U.S.C. § 1366.

7. Authority to bring the supplemental claims identified in this action is vested in the Office of the Attorney General of Maryland by § 9-344 of the Environment Article, Annotated Code of Maryland.

**DEFENDANT**

8. Defendant Baltimore County is a political subdivision of the State of Maryland, formed under the laws of the State of Maryland, and is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

### **FEDERAL STATUTES AND REGULATIONS**

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” into navigable waters except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued by U.S. EPA or an authorized state pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

10. The term “discharge of pollutants” is defined in Section 502(12) of the Act, 33 U.S.C. § 1362(12), to mean “any addition of any pollutant to navigable waters from any point source . . . .”

11. The term “navigable waters” is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(12) to mean “the waters of the United States, including the territorial seas.”

12. The term “point source” is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

13. Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

14. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19, provides that any person who violates, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. § 1311, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004, or not to exceed \$32,500 per day for each such violation thereafter.

### **MARYLAND STATUTES AND REGULATIONS**

15. Section 9-253 of the Environment Article, Annotated Code of Maryland, confers upon the Secretary of MDE all powers that are necessary to comply with and represent the State of Maryland (referred to throughout the Environment Article as “this State”) under the federal

Clean Water Act.

16. Pursuant to Section 9-322 of the Environment Article, "a person may not discharge any pollutant into waters of this State" except in compliance with certain provisions of the Environment Article, including Section 9-323.

17. Section 9-323 of the Environment Article requires a person to hold a discharge permit issued by the Department before the person may, among other things, operate any disposal system the operation of which could cause or increase the discharge of pollutants to waters of this State.

18. The term "discharge" is defined in Section 9-101(b) of the Environment Article as "(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute."

19. The term "pollutant" means: " (1) Any waste or wastewater that is discharged from: (i) A publicly owned treatment works; or (ii) An industrial source; or (2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State." Environment Article § 9-101(g).

20. The term "waters of this State" is defined by Section 9-101(l) to include "(1) both surface and underground waters within the boundaries of this State subject to its jurisdiction, including parts of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay, and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed to collect, convey, or dispose of sanitary waste; and (2) the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood."

21. Section 9-339 of the Environment Article authorizes MDE to bring an action for an injunction against any person who violated any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit adopted or issued by the Department thereunder.

22. Section 9-342(a) of the Environment Article provides that a person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit

adopted or issued by the Department thereunder, is subject to a civil penalty of up to \$10,000 per violation, with each day a violation occurs constituting a separate violation.

#### **GENERAL ALLEGATIONS**

23. Baltimore County owns and operates a municipal wastewater collection system that includes almost 3,000 miles of sewer lines and over 100 pump stations (hereinafter, the "Collection System"). The Collection System conveys wastewater generated by Baltimore County residents and businesses, as well as wastewater from neighboring Anne Arundel and Howard Counties, to the border Baltimore County shares with Baltimore City.

24. At various locations along the County/City border, Baltimore County's wastewater enters connecting sewage lines owned by Baltimore City and is conveyed for treatment at the Back River and Patapsco Waste Water Treatment Plants owned and operated by Baltimore City.

25. Baltimore County does not hold a National Pollutant Discharge Elimination System (NPDES) permit or a State discharge permit authorizing it to discharge wastewater from the Collection System to navigable waters or waters of the State.

26. At all times relevant to this Complaint, Baltimore County has discharged and continues to discharge untreated wastewater containing raw sewage from the Collection System through "point sources" to navigable waters and waters of the State, including, inter alia, Lynch Cove, Mardella Branch, Towson Run, Stemmers Run, Back River, Lake Roland, Patapsco River, North Point Creek, Bear Creek, Merrymans Branch, Loch Raven, White Marsh Creek, White Marsh Run, Northeast Creek, Bens Run, Gunpowder Falls, Herring Run, Jones Falls, Gwynns Falls and Jones Creek.

27. Wastewater collected by and transported through the Collection System is a "pollutant" as that term is defined at Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6), and at Section 9-101(g) of the Environment Article.

28. The waters identified in Paragraph 26, above, as well as other such surface waters to which pollutants have been discharged, are "navigable waters" within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), and "waters of this State" within the meaning of Section 9-101(l) of the Environment Article.

29. The waters identified in Paragraph 26, above, are tributaries to the Chesapeake Bay. The Chesapeake Bay is the nation's largest estuary, "a national treasure and a resource of worldwide significance," and for that reason accorded special recognition under Section 117 of the Clean Water Act, 33 U.S.C. § 1267.

30. Between July 1997 and the present, Baltimore County has discharged tens of millions of gallons of untreated wastewater containing raw sewage from its Collection System without NPDES permit authority. Unpermitted discharges from Baltimore County's Collection System have resulted from multiple causes including, inter alia, inadequate flow capacity, inadequate pumping capacity, inadequate maintenance of the collection system including pumping stations, and excessive infiltration and inflow to the sanitary sewers.

31. Untreated wastewater containing raw sewage can carry bacteria, viruses, parasitic organisms, intestinal worms, and borroughs (inhaled molds and fungi) and may cause a number of diseases in those persons who may come in contact with such wastewater. These diseases include, but are not limited to, highly communicable enteric diseases such as gastroenteritis, dysentery, and cholera.

32. Unpermitted discharges of raw sewage from the Collection System to certain receiving water bodies in and around Baltimore County have caused and/or contributed to the presence of elevated levels of coliform bacteria in these water bodies. Coliform bacteria is an indicator that unacceptable levels of disease-causing organisms may be present in receiving water bodies.

**FIRST CLAIM FOR RELIEF (CLEAN WATER ACT)**

33. Paragraphs 1 through 14 and 23 through 32 are re-alleged and incorporated herein by reference.

34. On various dates from July 8, 1997, and continuing periodically to the present, Baltimore County has discharged pollutants from its Collection System into navigable waters without the authorization of a NPDES permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

35. Each day of each unpermitted discharge of pollutants is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

36. Unless enjoined by the Court, Baltimore County will continue to discharge pollutants to navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

37. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319 (b) and (d), as modified by 40 C.F.R. Part 19, Baltimore County is liable for injunctive relief and civil penalties of up to \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004, and up to \$32,500 per day for each such violation thereafter.

**STATE OF MARYLAND'S FIRST SUPPLEMENTAL CLAIM FOR RELIEF**

38. Paragraphs 1 through 32 are re-alleged and incorporated herein by reference.

39. At least since July 1997, Baltimore County has discharged, and on occasion continues to discharge, pollutants from its Collection System into waters of this State without the authorization of a State discharge permit.

40. The unpermitted discharges include, without limitation, the unpermitted discharges identified in Paragraph 26, above.

41. Each day of each unpermitted discharge of pollutants is a separate violation of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

42. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore County's violation of Sections 9-322 and 9-323 of the Environment Article.

43. Unless enjoined by the Court, Baltimore County will continue to discharge pollutants to waters of this State without a permit in violation of Sections 9-322 and 9-323 of the Environment Article.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, the United States of America and the State of Maryland, respectfully pray that this Court provide the following relief:

1. A permanent injunction enjoining Baltimore County from any further violations of, and directing Baltimore County to take all steps necessary to come into permanent, consistent compliance with, the Clean Water Act and Title 9, Subtitle 3 of the Environment Article, and the regulations promulgated thereunder.
2. A judgment assessing civil penalties against Baltimore County of up to \$27,500 per day for each violation of the Clean Water Act occurring after January 31, 1997 through and including March 15, 2004, and up to \$32,500 per day for each such violation thereafter;
3. A judgment awarding the United States and the State of Maryland the costs of this action;  
and
4. Such further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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